

## **ALL THINGS RELATIVE IN JUVENILE CASES**

### **CPS Investigations and Case Management Cases**

- Relatives are often used as “safety resources” at these stages of the case when the child cannot safely remain with the parents during (1) an investigation or (2) after a case decision of abuse, neglect or dependency, or child in need of services
- DSS cannot allow the child to be placed with the relative without an safety assessment of the relative, Initial Kinship Care Assessment (for placements up to 30 days) and a Child and Family Team (CFT) meeting unless the child’s immediate safety is threatened, and then the CFT can be convened the next working day
- If it is later determined the child can be safely cared for by the parents, DSS may close its case management case, and the parents and relatives are free to structure their own placement of the child
- If the child cannot safely return home, DSS may not end its involvement until the child is in another legally secure placement

### **Nonsecure Custody Order – 7B-503 to 7B-505**

- The nonsecure custody order, AOC-J-151, contains a line for the name of an approved relative’s home
- When a request for nonsecure custody is made, the court must first consider release to the child’s parent or relative. If the court finds a relative is willing and able to provide proper care and supervision in a safe home, the child shall be placed with that relative unless the court finds placement with the relative would be contrary to the child’s best interest
- Placement with a relative at this point must be preceded by a Comprehensive Kinship Care Assessment for placements longer than 30 days
- Placement with a relative outside the state must be made in accordance with the ICPC, 7B-3800, et seq.

## **Hearing on Need for Continued Nonsecure Custody – 7B-506**

- At a continued custody hearing, the statute again mandates specific priority for relative placement. If the court finds a relative is willing and able to provide proper care and supervision in a safe home, the child shall be placed with that relative unless the court finds placement with the relative would be contrary to the child's best interest
- Inquiry must be made into possible relative placements (as well as the location of all parents). Early identification and evaluation helps avoid late relatives "parachuting" into the case after the child has long been in a secure and appropriate placement
- The Safe and Timely Interstate Placement of Foster Children Act of 2006 requires notice to relatives as well
- ICPC must be followed for an out of state placement, and the Safe and Timely Interstate Placement Act requires an interstate home study report to be completed within 60 days of receipt of the request, excluding time needed for licensure of foster or adoptive parents
- ICPC Regulation 7 can be used to speed up the interstate placement process. It provides for NC juvenile court order and expedited response from receiving state that has had our ICPC paperwork for 30 business days without an ICPC determination OR a child under 2 is to be placed with a relative OR a child of any age is to be placed with a relative in whose home he has spent a substantial amount of time
- Call NC ICPC office (919-733-9464) to track required time frames after order is sent in two business days from court to Raleigh. Raleigh ICPC has three business days to send the order to the receiving state. The Regulation 7 process is meant to be completed in 27 business days unless the two states agree to a different time frame, or the receiving state cites "extraordinary circumstances" that prevent compliance and sets definite date for a response.

## **Disposition – 7B-903**

- Same priority language about placement with relatives
- Same ICPC language
- Kinship Care Assessment required if not already done

- Court is also authorized to place the juvenile in the custody of a relative at disposition. 7B-507 and -907 do not allow the trial court to enter a permanent plan for a child at disposition, although 7B-903 and 7B-600 allow custody or guardianship to be awarded at any time. The parent must have the statutorily required notice that the trial court is considering a permanent plan for the child under 7B-907, and the required 7B-907 findings must be in the order. In re D.C., 183 NC App 344, 644 SE 2d 640 (2007)(at adjudication/disposition held a year after nonsecure custody was granted, trial court adjudicated, ceased efforts to reunite and awarded permanent guardianship to relatives. Case remanded for a permanency planning hearing and order)

### **Foster Care Issues for Relatives**

- In order to draw down IV-E administrative costs, child must be in a reimbursable (licensed) placement, but DSS can claim IV-E administrative costs during the time the relative is being licensed, for a maximum of 12 months, or the average licensing time, if less (we deem the average licensing time to be 12 months)
- Thus, while relative placements are favored in 7B, the county DSS with custody and placement responsibility cannot be federally reimbursed for worker overhead unless the relative is licensed.
- Division's licensing and regulatory unit in Black Mountain, NC, handles foster home licensing. Consultants are Nicole Jensen and Rhoda Ammons, 828-669-3388.
- The Fostering Connections to Success Act of 2008 emphasized that states may waive non-safety related licensing standards for relatives. Most frequent waivers are (1) sleeping arrangements (not enough beds or rooms so children of different genders or ages must stay together), and (2) capacity of more than 5 (if sibling group being placed in empty home, do not have to worry about capacity no matter the size of the sibling group, but if the relative children are joining other children in home, then may need waiver of 5 children cap)
- High school diploma or GED is no longer required for regular foster care if the relative can read and write. Still required for therapeutic foster care or Medicaid will be lost – one parent must have it – but rarely effects relative placements
- Cannot waive health and safety requirements such as fire inspection
- Cannot waive 30 hours of MAPP training - some counties provide one on one MAPP training called "Deciding Together" to help relatives or other foster parents who cannot attend normal MAPP classes

- Criminal history checks must be evaluated by the Division. No one can be licensed if a fingerprint check reveals they have a “criminal history” which means a felony or pending felony indictment for (1) child abuse or neglect, (2) spousal abuse, (3) crime against a child, including child porn, or (4) crime involving violence, including rape, sexual assault or homicide, other than physical assault or battery, no matter when it occurred. OR felony or pending felony indictment for (5) physical assault, battery, alcohol or drug related offense, if committed within the past five years
- If any presently licensed relatives fall within these automatic bar categories, their license will not be renewed when it expires. Fingerprint checks are not required for re-licensure, but DSS must check local court records, sex offender registry, Health Care Personnel Registry and NC DOC website
- With any other convictions, the Division must determine whether licensing will be allowed based on the facts of the case
- Any revocation or denial of a foster home license comes with the right to appeal within 60 days by filing a petition for a contested case hearing with OAH. A hearing before an administrative law judge is generally scheduled within four months. The decision of the ALJ is then sent to the DHHS Hearings and Appeals Section for a final decision. From there, any appeal is to Superior Court.
- Licenses are revoked based on substantiations of abuse or neglect or non-compliance with licensing rules. DSS social workers are usually witnesses at these hearings
- Foster care payments presently range from \$475 to \$634 per child, depending on the child’s age
- Unlicensed relatives who are caring for foster children are entitled to “child only” TANF which ranges from \$181 for one child to \$297 for 4 children
- When the licensed relative receives foster care board payments, the parent must be reported to child support enforcement for collection unless the establishment of paternity or the securing of support is reasonably anticipated to result in physical or emotional harm to the child or caretaker with whom the child is living. The receipt of TANF benefits also triggers child support involvement.
- Any other payments to an unlicensed relative placement must come from all county funds. In In re A.T., 191 NC App 372, 662 SE 2d 917 (2008), the Court of Appeals did not reach the merits of whether a juvenile court judge could order DSS to pay foster care board payments retroactively to relatives with whom the child stayed prior to the filing of the petition because the DSS appeal was from a motion to review a nonsecure custody order, not an appealable order.

## Review Hearings and Permanency Planning Hearings – 7B-906 and -907

- Relative caretakers for the child must be noticed of these hearings and have a right to be heard, but that notice and right to be heard does not confer party status on the relative
- Priority language on placement with relatives is not found in 7B-906 and -907, but both reference the court's authority to make any disposition authorized by 7B-903. In re L.L., 172 NC App 689, 616 SE 2d 392 (2005), held that this priority language is deemed incorporated into those review statutes, and thus the trial court erred in awarding custody to foster parents, who wished to pursue TPR, without making sufficient findings that placement of the child with out of state relatives was not in his best interest.
- 7B-907(d) allows the court to find that TPR is not required when the permanent plan is custody or guardianship with a relative

## Award of juvenile court custody or guardianship

- An appropriate person can be granted 7B custody or guardianship of a child at any stage of a juvenile proceeding. Juvenile court reviews, however, continue until the requirements of 7B-906(b) are met, which allows the court to waive further reviews. To do so, the court must find that (1) the child has resided with the relative, (2) the placement is stable and continuation of it is in the child's best interest, (3) neither the rights of any party nor the best interest of the child require six month hearings, (4) all parties understand that motions for review can still be brought at any time and (5) the order has designated the relative as the permanent guardian or custodian.
- An award of guardianship or custody must include a minimum outline of the time, place and conditions for visitation with the parent under 7B-905 or include findings why visitation is not in the child's best interest. It is reversible error to leave visitation rights in the discretion of a 7B guardian or custodian. In re T.T., 182 NC App 145, 641 SE 2d 344 (2007)(guardian); In re L.B., 181 NC App 174, 639 SE 2d 23 (2007)(custodian). The order needs to address the rights and responsibilities that remain with the parents under 7B-907(b). In re R.A.H., 182 NC App 52, 641 SE 2d 404 (2007).
- Even if further reviews are waived, a parent can file a motion for review under 7B-906(b), asking the court for return of the child. An award of custody can be changed based on the parent's change in circumstance affecting the welfare of the child. An award of guardianship that is not the permanent plan for the child

can also be changed if the parent demonstrates that the child will receive proper care and supervision and that reunification is in his best interest. In re J.D.C., 174 NC App 157, 620 SE 2d 49 (2005). As the permanent plan, guardianship cannot be changed unless the guardian is shown to be unfit, unwilling, unable to care for the child, or the relationship between the guardian and the child is no longer in the child's best interest. 7B-600(b).

- The provisions of the ICPC were held not to apply at a permanency planning hearing where the court awarded custody to an out-of-state mother in In re Rholetter, 162 NC App 653, 592 SE 2d 237 (2004). The child had been removed from her father and stepmother, and custody was eventually given to the mother who lived in SC. The Court held that the award of full custody to a non-removal parent was not a "placement" under 7B-3800, Article III(a), because it was not for purposes of foster care or preliminary to an adoption.
- The result in Rholetter is basically consistent with the ICPC's Regulation 3, which recognizes "placements made without ICPC protection" to non-removal parents when (1) the court has no evidence that the parent is unfit, (2) does not seek any evidence of fitness from the receiving state, and (3) the court relinquishes jurisdiction over the child immediately upon placement with the parent. Regulation 3 does allow a request for a "courtesy check" by the receiving state of the non-removal parent, which would not invoke the ICPC home study process, but such a "courtesy check" is totally discretionary with the receiving state. Remember that a placement with a non-removal parent made without any ICPC compliance will have receive no monitoring or supervision in the receiving state.
- The Court of Appeals has also held that the ICPC does not apply to an award of guardianship (and presumably juvenile court custody as well) to a relative in another state, again reasoning that such an award was not a "placement" for purposes of foster care or preliminary to an adoption. In re J.E., 182 NC App 612, 643 SE 2d 70 (2007), rev. denied, 361 NC 427, 648 SE 2d 504 (2007). The majority distinguished In re L.L.'s holding that the ICPC applied to out-of-state relative placements under 7B-505 and 7B-903, noting that those statutes specifically require ICPC compliance for out-of-state placements, and that neither 7B-600 nor 7B-907 mentions the ICPC.
- Like the opinion in Rholetter, the JE opinion did not consider the binding effect of the ICPC Regulations. Regulation 3(2)(a) states that the ICPC covers four types of placement categories: adoptions, licensed foster homes (whether related or unrelated), group homes and residential placements, and placements with parents and relatives. (2)(b) then sets out the exception for placement with the non-removal parent discussed above. There is no exception for any relative placement, no matter the type of placement. Awards of custody or guardianship to out of state relatives without ICPC compliance are almost always met with opposition from the receiving state who view these placements as requiring ICPC compliance and calls to national ICPC staff.

- At whatever point custody or guardianship is awarded, the court must verify that the relative custodian or guardian understands its legal significance and will have adequate resources to care appropriately for the child. 7B-906(g); 7B-907(f). See In re J.E., 182 NC App 612, 643 SE 2d 70 (2007)(order complied with 7B-907(f) without specific findings of fact when the home study considered by the court included information meeting this requirement) and In re R.A.H., 182 NC App 52, 641 SE 2d 404 (2007)(where specific finding was made and was supported by evidence from the GAL and DSS and child's 6 years with foster parent.)

### **Resources for custodian or guardian**

- On the issue of adequate resources, while the custodian or guardian may receive child only TANF benefits discussed below, they may also lose other benefits provided when the child was in DSS custody, such as day care, transportation and assistance with appointments and school issues.
- A relative who was licensed as a foster parent will lose the much higher foster care payments and only be eligible for TANF payments.
- Moreover, some relatives choose not to apply for TANF benefits because the parent will be pursued for child support.

### **Award of Chapter 50 custody – 7B-911**

- While usually used to award Chapter 50 custody to one parent, 7B-911 can be used to create or modify a Chapter 50 custody order in favor of a relative and thus allow the juvenile court to terminate its jurisdiction.
- The court can award Chapter 50 custody if, in the civil custody order created or modified, the court makes findings and conclusions that support entry or modification of that order AND the court finds in the order terminating juvenile court jurisdiction that there is no need for continued State intervention on behalf of the child, and that at least 6 months have passed since the person receiving custody was found to be the permanent plan for the child, although this finding is not required if the court is awarding custody to a person with whom the child was living when the juvenile petition was filed (or to a parent).

### **Adoption**

- If adoption by a relative is the agency's plan for the child, one possible legal clearance route is the use of a designated relinquishment by the parent (DSS-

1804), which only authorizes DSS to place with the named relative. The parent can check the block that requires DSS give her notice if that adoption cannot be completed, and she will have an additional 10 days to revoke. If the relinquishing parent cannot be located after a diligent search, the notice can be sent to the address given on the relinquishment, and her 10 day revocation period runs from the date of last attempted delivery.

- Relatives who adopt from DSS must have a favorable preplacement assessment, like any other DSS adoptive placement. DSS cannot give a relative with a “criminal history” discussed above a favorable preplacement assessment. G.S. 48-3-309. Thus, that relative could not be approved as a foster parent or adoptive parent for the child. The relative could be granted guardianship or custody of the child as the permanent plan. The relative could later complete a private relative adoption for which no preplacement assessment is required, but no adoption assistance would be available
- Adoption assistance eligibility is available for many children adopted from foster care. This assistance must be determined prior to the entry of the final decree of adoption
- A relative who receives adoption assistance will receive a monthly adoption assistance check equal to the monthly foster care board rate for that child until the child is 18 and the ability to use the \$2400/year per child “vendor payment” benefit to pay for medical and non-medical needs not met by Medicaid, such as tutoring, computers, respite care, orthopedic or orthodontic appliances, or specialized clothing or equipment.
- A relative who becomes an adoptive parent will also have access to a post-adoption social worker and post-adoption services from the agency

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